



Elise Helgesen

(202) 466-3234 x243 (phone)  
(202) 466-2587 (fax)  
helgesen@au.org

1301 K Street, NW  
Suite 850, East Tower  
Washington, DC 20005

Testimony of  
Elise Helgesen,  
State Legislative Counsel,  
Americans United for Separation of Church and State  
**in Opposition to**  
**HB 4927, HB 4928, and HB 4991, Creating a Religious Exemption for Child Placing**  
**Agencies**

House Committee on Families, Children, and Seniors  
September 25, 2013

On behalf of its Michigan members and supporters, Americans United for Separation of Church and State urges you to oppose HB 4927, HB 4928, and HB 4991, bills that would provide child placing agencies with a broad right to refuse to place children in adoptive homes if that placement is contrary to an agency's religious beliefs. Passage of this bill could lead to discrimination against parents seeking to adopt and could burden a child's right to be adopted into a stable home according to the best interests of the child. A broad exemption such as this would place the beliefs of the agency above the needs of the child; therefore, these bills must be rejected.

**This Exemption is Unconstitutionally Broad**

Although the government may offer religious accommodations even where it is not required to do so by the Constitution,<sup>1</sup> the state's ability to provide religious accommodations is not unlimited: "At some point, accommodation may devolve into an unlawful fostering of religion."<sup>2</sup> In *Texas Monthly, Inc. v. Bullock*,<sup>3</sup> the Supreme Court explained that legislative exemptions for religious organizations that exceed free exercise requirements will be upheld only when they do not impose "substantial burdens on nonbeneficiaries" or they are designed to prevent "potentially serious encroachments on protected religious freedoms." To meet the confines of the Establishment Clause, "an accommodation must be measured so that it does not override other significant interests."<sup>4</sup> It may not place "unyielding weight" on the religious interest "over all other interests."<sup>5</sup>

The introduction of HB 4991 has changed the original language of HB 4927 and 4928 to allow exemptions only for agencies with "sincerely held religious beliefs" rather than for agencies who object due to "religious and moral convictions." It also requires objecting

<sup>1</sup> Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.

<sup>2</sup> *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

<sup>3</sup> 480 U.S. 1, 18 n. 8 (1989).

<sup>4</sup> *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>5</sup> *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).

agencies, in absence of providing services, to provide either a referral or notice to the state that a referral is needed. However, even this new language cannot save HB 4991 from the same problems inherent in both HB 4927 and HB 4928: the religious exemption for adoption agencies would allow agencies' religious interests to override "all other interests." For example, an agency's sincerely held religious beliefs may place a substantial burden on parents who are referred to another agency, requiring them to submit a new application, endure an extended waiting period, or travel a greater distance. Instead of preserving religious exercise, the bills would allow one group's religion to trump the faith, beliefs, and practices of another group.

### **This Exemption Would Burden Adoptees' Best Interests**

These bills prioritize the religious views of child placing agencies above the best interests of the child. This contradicts state law and generally accepted standards, which require both the courts and placing agencies to prioritize the child's best interest<sup>6</sup> when placing a child in a foster or adoptive home. Section 710.21a of the Michigan Probate Code states that "[i]f conflicts arise between the rights of the adoptee and the rights of another [party to the adoption], the rights of the adoptee shall be paramount."

Yet, even the text of HB 4928 recognizes that the bill's religious exemption would create friction with the child's best interest standard. It states that the refusal of an agency because the placement "violates the child placing agency's written religious or moral convictions or policies does not constitute a determination that the proposed adoption is not in the best interests of the adoptee." Therefore, these bills would facilitate a blatant contradiction of public policy by allowing a child placing agency to reject an adoptive home, even if it is in the child's best interest. Accordingly, the exemption created by these bills would endanger a child's right to a suitable placement and undermine the state's policy of putting children's interests first. For these reasons, these bills must be rejected.

### **This Exemption Permits Government-funded Discrimination**

HB 4927, HB 4928, and HB 4991 would allow agencies to use religious doctrine as the defining criterion for selecting adoptive parents even when these agencies accept government funds. These bills would enable government funding for agencies that discriminate against potential adoptive parents for any reason, as long as the agency claims the discrimination is based upon its religious beliefs. For example, an adoption agency could refuse to place a child in an otherwise stable home because the prospective parents were unmarried, were a same sex couple, or were adherents to a religion adverse with the agency's beliefs. Allowing government money to flow to these institutions without holding them to non-discrimination laws is a clear violation of one of the central principles of our country's constitutional order: "the Constitution does not permit the State to aid discrimination."<sup>7</sup>

---

<sup>6</sup> The Child Custody Act defines a placement made in the "best interests of the child" to include factors such as: the emotional bond between the child and the parties involved in the adoption; the ability of the adoptive parties to provide a loving and affectionate environment as well as a stable and permanent home; the health of the parties; the school, home, and community of the parties; and the reasonable preference of the child. MICH. COMP. LAWS § 722.23 (1993).

<sup>7</sup> *Norwood v. Harrison*, 413 U.S. 455, 465-66 (1973).

Moreover, these bills fail to safeguard taxpayer funds from flowing to organizations that contract with the government to provide services, but then refuse to fulfill their obligations under the contract.<sup>8</sup> The bills prohibit a state or local government entity from withholding a grant, contract, or program participation due to the child placing agency's religious objection. It is entirely plausible that an agency would receive government funding to provide children with placements according to the best interests of those children, but then fail to carry out its mission because it objects to the religion of the potential parents, despite it being an otherwise suitable placement. For example, a government funded agency could refuse to place a child with a potential family because it objects to their practice of Islam, that one of the parents was previously divorced, or that an older sibling was born before the parents were married. Taxpayer funds should not fund services contingent on a religious litmus test – nor should it fund programs that use religion to deny essential services to those who need them.

\*\*\*

Although Americans United supports accommodations to protect religious freedoms, the exemptions in HB 4927, HB 4928, and HB 4991 would impermissibly create state-sponsored discrimination and would burden children's rights to be placed in adoptive homes according to their best interests. Accordingly, I urge you to oppose these bills.

---

<sup>8</sup> In a similar example, the Obama Administration recently decided not to renew a grant with the United States Conference of Catholic Bishops (USCCB) for human trafficking services. The Administration did so because the USCCB refused to serve or even refer victims of human trafficking for reproductive health services, such as contraception, sterilization, or abortion. These services, however, are critical to these victims. Sara Israelsen-Hartley, *Religious Discrimination Alleged by Catholic Group That Lost Federal Funding to Stop Human Trafficking*, DESERT NEWS (Nov. 4, 2011) available at <http://www.deseretnews.com/article/700194644/Religious-discrimination-alleged-by-Catholic-group-that-lost-federal-funding-to-stop-human.html?pg=all>.